

REMARKS

The Examiner requests a listing of related co-pending applications and patents. Applicant is aware of the following co-pending applications and patents having a similar disclosure:

1. Application Serial No. 09/026,086  
Now U.S. Patent No. 6,006,755
2. Application Serial No. 09/410,448  
Now U.S. Patent No. 6,405,732
3. Application Serial No. 10/156,505  
Filed: 28 May 2002  
Title: Method to Treat Gastric Reflux Via the Detection and Ablation of  
Gastro-Esophageal Nerves and Receptors  
Examiner: Peffley, Michael F.
4. Application Serial No. 09/026,316  
Now U.S. Patent No. 6,056,744
5. Application Serial No. 09/026,296  
Now U.S. Patent No. 6,009,877
6. Application Serial No. 10/405,746  
Filed: 2 April 2003  
Title: Sphincter Treatment Apparatus  
Examiner: Unknown

The Applicant notes the following related applications:

1. Application Serial No. 10/084,590  
Now U.S. Patent No. 6,589,238
2. Application Serial No. 09/036,091  
Now U.S. Patent No. 6,092,528
3. Application Serial No. 09/235,060  
Now U.S. Patent No. 6,254,598
4. Application Serial No. 09/304,784  
Now U.S. Patent No. 6,440,128
5. Application Serial No. 09/304,737  
Now U.S. Patent No. 6,464,697
6. Application Serial No. 10/046,637  
Now U.S. Patent No. 6,652,034
7. Application Serial No. 09/032,367  
Now U.S. Patent No. 6,044,846
8. Application Serial No. 09/304,750  
Now U.S. Patent No. 6,402,744
9. Application Serial No. 09/304,733  
Now U.S. Patent No. 6,355,031
10. Application Serial No. 09/476,537  
Now U.S. Patent No. 6,547,776
11. Application Serial No. 09/304,773  
Now U.S. Patent No. 6,258,087
12. Application Serial No. 09/304,743  
Now U.S. Patent No. 6,325,798
13. Application Serial No. 09/304,770  
Now U.S. Patent No. 6,423,058
14. Application Serial No. 09/524,432  
Now U.S. Patent No. 6,544,226

15. Application Serial No. 09/556,169  
Filed: 21 April 2000  
Title: Systems and Methods for Treating Dysfunctions in the Intestines and Rectum  
Examiner: Vrettakos, Peter J
16. Application Serial No. 09/921,356  
Filed: 2 August 2001  
Title: Apparatus to Treat Esophageal Sphincters  
Examiner: Peffley, Michael F.
17. Application Serial No. 09/073,467  
Filed: 9 October 2001  
Title: Method for Treating a Sphincter  
Examiner: Peffley, Michael F.
18. Application Serial No. 09/955,915  
Filed: 19 October 2001  
Title: Devices, Systems and Methods for Treating Tissue Regions of the Body  
Examiner: Ruddy, David M.
19. Application Serial No. 09/776,140  
Filed: 2 February 2001  
Title: Sphincter Treatment Apparatus  
Examiner: Peffley, Michael F.
20. Application Serial No. 10/428,458  
Filed: 2 May 2003  
Title: GERD Treatment and Apparatus  
Examiner: Unknown
21. Application Serial No. 10/230,655  
Filed: 29 August 2002  
Title: GERD Treatment Apparatus and Method  
Examiner: Unknown

22. Application Serial No. 09/911,874  
Filed: 24 July 2001  
Title: GERD Treatment and Apparatus and Method  
Examiner: Peffley, Michael F.
23. Application Serial No. 09/971,085  
Filed: 4 October 2001  
Title: Apparatus to Treat Esophageal Sphincters  
Examiner: Peffley, Michael F.
24. Application Serial No. 10/254,471  
Filed: 25 September 2002  
Title: Method for Treating a Sphincter  
Examiner: Unknown
25. Application Serial No. 10/155,294  
Filed: 24 May 2002  
Title: Systems and Methods for Forming Composite Lesions to Treat  
Dysfunction in Sphincters and Adjoining Tissue Regions  
Examiner: Peffley, Michael F.
26. Application Serial No. 10/017,906  
Filed: 14 December 2001  
Title: Systems and Methods Employing a Guidewire for Positioning and  
Stabilizing External Instruments Deployed Within the Body  
Examiner: Unknown

Claim 114 has been canceled.

Claims 107-113 remain pending in the application. Of these, claims 111-113 are currently amended.

Claims 111-114 are rejected under 35 U.S.C. §101. Claim 111 has been amended to eliminate positive recitation of the connection of the device to tissue and thereby overcome this rejection.

Claims 111-114 are rejected under 35 U.S.C. §112, first and second paragraphs.

Claim 111 has been amended to place it in method claim format to overcome these rejections.

Claims 107-114 are rejected under the doctrine of obviousness-type double patenting over the following patents:

1. Claims 1-88 of U.S. Patent No. 6,056,744
2. Claims 27-52 of U.S. Patent No. 6,077,257
3. Claims 1-51 of U.S. Patent No. 6,254,598
4. Claims 1-21 of U.S. Patent No. 6,258,087
5. Claims 1-16 of U.S. Patent No. 6,402,744

Claims 107-114 are provisionally rejected under the doctrine of obviousness-type double patenting over the pending claims of the following co-pending applications:

1. Application Serial No. 09/766,140
2. Application Serial No. 09/921,356, now U.S. Patent No. 6,613,047
3. Application Serial No. 09/943,646

Applicant notes that this application has been abandoned in favor of continuation Application Serial No. 10/405,746 (the '746 Application), filed April 2, 2003, Examiner unknown. A copy of the claims of the '746 Application as currently pending is attached (Attachment A).

4. Application Serial No. 09/911,874
5. Application Serial No. 09/971,085

With respect to all of the double patenting rejections and provisional double patenting rejections, the Examiner indicates that the "the use of mapping electrodes to first detect tissue is deemed an obvious consideration for one of ordinary skill in the art, particularly in view of the

Edwards disclosure.” Applicant respectfully disagrees. MPEP §804(II)(B)(2) requires a side by side comparison of the claims of the instant application and the claims of the cited patents and applications, keeping in mind that only the claims of the cited patents and applications can be considered as support for the rejection, and the disclosures of these references are looked to only to determine the meaning of the claims. Here, the Examiner relies on the Edwards disclosure in support of the rejection. None of the cited claims or their accompanying disclosures teach or suggest mapping tissue at or near a sphincter. Although mapping tissue in other body regions may be known in the art, e.g., cardiac tissue, Applicant does not believe that either the possibility or the desirability of mapping electrical action potential in a tissue region at or near a sphincter would be known to or an obvious consideration for one of ordinary skill in the art, absent reliance on the disclosure of the cited references.

Application Serial No. 09/924,935

Amendment B

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Reconsideration in view of the foregoing amendments and remarks and allowance of claims 107-113 is respectfully requested.

Respectfully Submitted,

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CURON/16785-CON/031015 AMENDMENT B AS FILED

Enclosures: Amendment Transmittal Letter  
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